

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PACE-O-MATIC, INC.,	:	
	:	
	:	
Plaintiff,	:	
v.	:	Docket No. 1:20-cv-00292
	:	
ECKERT SEAMANS CHERIN &	:	
MELLOTT, LLC, MARK S. STEWART,	:	(Judge Jennifer P. Wilson)
and KEVIN M. SKJOLDAL,	:	
	:	
Defendants.	:	
	:	

**MOTION OF DEFENDANTS,
ECKERT SEAMANS CHERIN & MELLOTT, LLC,
MARK S. STEWART AND KEVIN M. SKJOLDAL,
TO DISMISS CLAIMS AND REQUEST FOR RELIEF FROM
AMENDED COMPLAINT OF PLAINTIFF, PACE-O-MATIC, INC.**

Defendant, Eckert Seamans Cherin & Mellott, LLC (“Eckert”), Mark S. Stewart and Kevin M. Skjoldal (collectively, “defendants”), by and through their counsel, Fox Rothschild LLP, hereby move the Court to dismiss certain claims and requests for relief from the Amended Complaint of plaintiff, Pace-O-Matic, Inc. (“POM”), pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of their motion, defendants allege as follows:

1. This case involves allegations of a breach of fiduciary duty by POM against Eckert arising from legal positions asserted by Eckert on behalf of another Eckert client.

2. POM commenced this action by the filing of a Complaint on February 18, 2020 against Eckert only.

3. The original Complaint contained claims for declaratory judgment and breach of fiduciary duty.

4. Eckert answered the Complaint on March 10, 2020.

5. On August 3, 2021, following leave of Court, POM filed an Amended Complaint that added a claim for fraud and claims for declaratory judgment and breach of fiduciary duty against the two individual defendants.

6. On August 11, 2021, the Court approved a stipulation permitting defendants until August 27, 2021 to answer, respond or otherwise plead in response to POM's Amended Complaint.

7. Defendants now move to dismiss Count I (declaratory judgment) and Count III (fraud) of the Amended Complaint and all requests for punitive damages for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6).

8. Defendants will file their memorandum of law in support of this motion on September 10, 2021, consistent with Local Rule 7.5 of the Rules of the United States District Court for the Middle District of Pennsylvania.

WHEREFORE, defendants, Eckert Seamans Cherin & Mellott, LLC, Mark S. Stewart and Kevin M. Skjoldal, respectfully request that this Court enter their proposed form of Order and grant the motion to dismiss Counts I and III, and all requests for punitive damages, from the Amended Complaint of plaintiff, Pace-O-Matic, Inc. for failure to state a claim.



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**Counsel for Defendants,
ECKERT SEAMANS CHERIN & MELLOTT,
LLC, MARK S. STEWART, and KEVIN M.
SKJOLDAL**

Date: August 27, 2021

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and KEVIN M. SKJOLDAL,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF NON-CONCURRENCE

I, Robert S. Tintner, Esquire, hereby certify that counsel for plaintiff, Daniel T. Brier, Esquire, does not concur with the relief sought in this motion.



ROBERT S. TINTNER, ESQUIRE

Dated: August 27, 2021

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and KEVIN M. SKJOLDAL,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I, Robert S. Tintner, Esquire, hereby certify that, on this 27th day of August, 2021, I served a true and correct copy of the foregoing Motion to Dismiss, via ECF, upon the following:

Daniel T. Brier, Esquire
Donna A. Walsh, Esquire
Myers, Brier & Kelly, LLP
425 Spruce Street, Suite 200
Scranton, PA 18503

**Counsel for Plaintiff
PACE-O-MATIC, INC.**



ROBERT S. TINTNER, ESQUIRE